



**MIDDLEBURG TOWN COUNCIL
REGULAR WORK SESSION
MEETING MINUTES**



Thursday, September 28, 2017

PRESENT: Mayor Betsy A. Davis
Councilmember J. Kevin Daly
Councilmember Kevin Hazard
Councilmember Peter Leonard-Morgan
Councilmember Trowbridge "Bridge" Littleton
Councilmember Philip Miller
Councilmember Mark T. Snyder

STAFF: Martha Mason Semmes, Town Administrator
Rhonda S. North, MMC, Town Clerk
William M. Moore, Town Planner
Cindy C. Pearson, Economic Development Coordinator
Jamie Gaucher, Business & Economic Development Director

ABSENT: Vice Mayor Darlene Kirk

The Town Council of the Town of Middleburg, Virginia held their regular monthly work session on Thursday, September 28, 2017 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 6:00 p.m.

Mayor Davis thanked Town Clerk North and the staff for organizing the retirement party for Economic Development Coordinator Pearson. Town Clerk North noted that Town Treasurer Bott was responsible for the delicious cake.

Council Approval - Resolution of Appreciation - Cindy Pearson

Councilmember Daly moved, seconded by Councilmember Snyder, that the Council adopt a resolution extending its appreciation to Cindy C. Pearson for her service to the Town of Middleburg from October 16, 2006 through September 30, 2017.

Mayor Davis read the resolution aloud. She thanked Ms. Pearson for her service and presented her with a signed copy of the resolution and a Middleburg paper weight. Ms. Davis noted that she would be truly missed and she wished her well.

Vote: Yes – Councilmembers Daly, Hazard, Leonard-Morgan, Littleton, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Vice Mayor Kirk

(Mayor Davis only votes in the case of a tie.)

Council Approval - Acceptance of Easements & Release of Performance Bond –
Clites Architecture

Town Planner Moore reminded Council that Tim Clites redeveloped the house located at 109 West Marshall Street from residential to an office use. He further reminded them that Mr. Clites was required to do public improvements, which were bonded by VDOT and have been accepted. Mr. Moore noted that he also had to provide the Town with a site plan bond for other improvements, which were now complete. He advised that Mr. Clites had to dedicate easements to the Town – one for water meters, including a meter that served a different property, and one for a sidewalk that was re-routed for ADA purposes. Mr. Moore recommended acceptance of the easement and the release of the \$10,000 cash bond.

Councilmember Snyder moved, seconded by Councilmember Daly, that Council accept the easement for Site Plan 15-03 for Timothy and Linda Clites at 109 West Marshall Street and accept the easements and release the performance bond.

Vote: Yes – Councilmembers Daly, Hazard, Leonard-Morgan, Littleton, Miller and Snyder
No – N/A
Abstain: N/A
Absent: Vice Mayor Kirk
(Mayor Davis only votes in the case of a tie.)

Discussion - Sidewalk Cafés

Town Planner Moore advised Council that he wanted to introduce the concept of sidewalk cafes to see if there was any interest in allowing them and, if so, he would return with a detailed policy. He noted that since the completion of the Washington Street Project, which included some bump-outs, he had been approached by a couple of businesses that were possibly interested in sidewalk dining. Mr. Moore advised that the Town must look at many aspects of this request to make sure there would still be passable right-of-way, as well as the need to address any liability issues. He noted that sidewalk cafes could add life to a street and advised that he experienced this in Winchester at their pedestrian mall. Mr. Moore advised that Leesburg also had sidewalk dining and reiterated that it added a sense of life to a street. He questioned whether there was an interest on the part of Council in this, and if so, he would craft a draft ordinance for their review.

Councilmember Snyder noted that he was skeptical; however, he would love to see the staff work out a way so it could happen.

Councilmember Daly noted that he liked the concept and opined that it was similar to what was done in Europe.

Councilmember Leonard-Morgan advised that he was a big fan of the idea. He recognized that there were some hurdles to overcome; however, he opined that it would be wonderful for the vibrancy of the town.

Town Planner Moore reminded Council that it would not be open to everyone as some areas of the right-of-way were too constrained.

Councilmember Hazard questioned whether VDOT was the biggest hurdle. Town Planner Moore confirmed it was not and advised that this could be regulated locally. He advised that the biggest hurdle was the need to protect the Town’s interest in terms of being held harmless and to ensure there was still room for the pedestrians.

Councilmember Daly suggested the need to scrutinize the tables and chairs. Town Planner Moore suggested the HDRC would have to review the proposed furniture and enclosures that would be necessary if the restaurant's ABC license was extended into the right-of-way.

Councilmember Snyder questioned whether Mr. Moore was referring to a designated area when he spoke of an enclosure. Town Planner Moore confirmed he was and noted that this could involve stanchions with a rope or chain between them. He advised that he would work on something that he would present to the Council in October or November.

Councilmember Snyder advised that he would rather the proposal be good than quick. Councilmember Littleton opined that the Town had time as this was not the time of year where people would want to eat outdoors anymore.

Town Planner Moore noted that there were a lot of moving parts and details. He advised this was something he would get to the Council within the next couple of months.

Discussion – Goals (continued)

Place a Mayor's message on Town website & in newspaper quarterly

Mayor Davis noted that someone suggested that time be allocated to the message by the Mayor and a member of Council once per quarter. She questioned the time for the Councilmember.

Councilmember Leonard-Morgan explained that he thought it was be nice if a different member of Council suggested a theme each time a message was done.

Councilmember Snyder opined that this should be the Mayor's preference and suggested that if she wanted input, she would have it.

Mayor Davis opined that it would be good to have suggestions from the Council on what the messages should include. Councilmember Leonard-Morgan suggested the Mayor would get different ideas and thoughts, as well as different levels of creativity.

Councilmember Littleton opined that it would increase citizen engagement and transparency.

Mayor Davis questioned the time frame in which the Council wanted this done. Councilmember Littleton noted that the next quarter would begin on October 1st and suggested the goal be before Thanksgiving. He further suggested the Mayor's first message be around the upcoming holidays.

Mayor Davis agreed. She questioned whether the message would just be on the Town's website or also in the newspapers. Councilmember Littleton opined that it would be on the website and in the water bills. Councilmember Hazard noted that it was also to be in the newspapers.

Councilmember Snyder suggested the Mayor get one out and see how it went. He further suggested the Mayor could tell the Council how practical this was and get feedback.

Mayor Davis questioned when the next one should go out if the first one was in November. Town Clerk North noted that if the Council wanted them to be included in the water bill, the water bill would go out in March for the January/February billing period. Councilmember Snyder opined that this was acceptable.

Councilmember Hazard questioned whether the Council wanted to include it in the water bill. He suggested it be on the Town's website and in the two local newspapers. Councilmember Snyder agreed. He opined that the newspapers would publish it.

Mayor Davis suggested an item be placed in the water bill to let the citizens know the message could be found on the Town's website and in the newspapers.

Councilmember Leonard-Morgan suggested the message also include a photograph and opined that it would be fun to have something visual to go along with it.

Mayor Davis advised that she would do a message in November, March, and May or June. She suggested it not be in the water bill. Ms. Davis further suggested that it include a photograph.

Councilmember Hazard questioned where it would be placed on the Town's website. He opined that she currently had a message on the homepage. Mayor Davis suggested the current message be changed quarterly and that it include a different photograph with each message.

Councilmember Littleton suggested that since this would only be done four times a year that it be sent out through the Friday Email Blast. Councilmember Daly suggested the Mayor use all of the mediums that were available. Councilmember Littleton suggested she use the free mediums.

Perform a downtown parking study

Town Administrator Semmes reminded Council that they asked the staff to do something through the police and then if they decided they wanted to do more, they could. She reported that Chief Panebianco gave her his report on September 22nd and noted that they were scheduled to discuss it next week. Ms. Semmes suggested she present the results during the next Council meeting. She reiterated that the Council could then decide if they wanted to spend money on a study or whether the Chief's study offered good guidance. Ms. Semmes expressed an understanding of what the Council wanted and opined that this study would complete the goal.

Councilmember Snyder questioned whether the Council was talking about updating the last study or whether this was a new stand-alone one. He further questioned the scope of the study.

Town Administrator Semmes reminded Council that the last study involved both public and private parking. She advised that the Chief felt he could take a good look at the on-street parking, as well as the two public parking lots. Ms. Semmes reiterated that he did so and looked at the occupancy of the Town controlled spaces. She suggested that if the Council wanted the staff to do more, it could. Ms. Semmes reiterated that the first effort focused on the on-street public parking and the two public parking lots. She noted that the Chief looked at a bunch of busy days, at different times of the day.

Councilmember Miller opined that he looked at parking four times a day for two weeks. Town Administrator Semmes reported that he looked at it three times a day for three weeks. She suggested this discussion be placed on hold until the Council could see if they were satisfied with the information. Ms. Semmes reiterated that she and the Chief would review the results next week.

Councilmember Daly questioned whether this review would occur in an open meeting or whether it would just be the staff. Town Administrator Semmes advised that it would first consist of the staff and noted that she would then send the results to the Council. She advised that she looked at the preliminary numbers; however, she wanted to talk to the Chief about them. Ms. Semmes reminded Council that they said "the other study was expensive".

Councilmember Miller reminded Council that they would be paying for a professional analysis by people who did this and would get their recommendations.

Town Administrator Semmes suggested that if the Council wanted a professional study, the staff could give the firm the Chief's data to start with, which may save the Town money.

Mayor Davis suggested that if the town was constantly crowded, the Council may want to think about spending \$30,000 for a study; however, she drove through town daily and found there were a lot of spaces available, both on the weekends and during the week. She advised that she was not saying there was not ever a time when the parking spaces were not filled; however, she reiterated that she saw spaces every time she drove around. Ms. Davis reported that someone just told her that they loved the new parking as they could always find a spot. She advised that she did not see spending that kind of money on a study when things seemed to be okay.

Councilmember Snyder advised that his experience mirrored the Mayor's. He noted that he went to two or three shops whenever possible and never had to go around the block more than once before he found a parking spot.

Councilmember Hazard suggested the staff ask other towns that were in the same situation what they were doing. He noted that while not ideally tailored to Middleburg, it would give the Council an idea of what could be done. Mr. Hazard advised that Culpeper was providing elevator parking because it had issues.

Councilmember Daly suggested the Council wait to see what the staff's study revealed and then look at this further. Councilmember Miller agreed with the need to look at the data before jumping to conclusions. He noted that he heard complaints from customers all the time.

Councilmember Littleton opined that this was because people did not want to walk. Councilmember Miller concurred that it was an issue of convenience relative to where people were going.

Mayor Davis noted that the west end of town was more crowded because the bank, post office and coffee shop were all together; however, there was always a parking space or two available. She agreed that people did not want to walk.

Councilmember Snyder noted that the Town had spent \$20,000-40,000 twice on parking studies.

Councilmember Miller noted that the last one was done twelve years ago before the resort was built and part of the back side of town was redeveloped. He opined that it may be worth doing another one.

Councilmember Littleton noted that when he did the economic survey in March, he received one thousand two hundred responses – half of which were by people who lived within five miles of town. He advised that one of the questions that were asked was “what were one or two things that should be done to improve Middleburg”. Mr. Littleton reported that one of the biggest answers was not enough parking. He opined that if there was plenty of parking, there was a perception problem. Mr. Littleton noted that there may be a need for better signage.

Mayor Davis opined that it would be interesting to do the survey again since the Town now offered three hour, free parking. She suggested that an even more direct question would be “whether people felt the parking had improved”.

Councilmember Littleton noted that the survey did not ask whether Middleburg had enough parking and reiterated that it asked “what needed to be improved”, with one of the biggest responses being parking. He opined that this was the perception.

Mayor Davis noted that if people walked a block or two, they would find plenty of parking. Councilmember Leonard-Morgan opined that people did not want to walk a block or two.

Mayor Davis noted that recently, an entire block of parking spaces was completely empty.

Town Administrator Semmes opined that Middleburg was not the only town with this perception problem. She reported that Chief Panebianco’s parking study summary stated that seventy percent or more of the time, the parking spaces were only occupied thirty-seven percent of the time. She further reported that only nine percent of the time, were more than eighty percent of the available spaces occupied. Ms. Semmes noted that the survey was conducted in the mornings, mid-day and afternoons.

Mayor Davis suggested further discussion wait until the next Council session, to which the Council agreed.

Town staff office needs assessment

Town Clerk North reported that the RFP for the space needs study would be posted on eVA early next week.

Councilmember Littleton reported that the Town Properties Committee was scheduled to meet on October 19th. Town Administrator Semmes opined that the first thing the Committee would talk about would be an understanding of the Council’s charge to them. She further opined that everyone was on the same page.

Councilmember Leonard-Morgan opined that this was an important item. He advised that he came into the Town Office from time-to-time and noted that everyone worked in tight confines.

Town Administrator Semmes suggested the Council talk about the schedule. She noted that the respondents to the RFP would have to tell the Town how long it would take to do the study. Ms. Semmes opined that the comment listed under the “Desired Outcomes” on the quad sheet was reasonable, which was the third quarter of 2018.

Councilmember Snyder questioned the scope of the RFP. Town Administrator Semmes explained that it was to look at the current level of staffing and the projected level in twenty years and to determine the space needed to accommodate the needs of both the Police Department and the Administrative Staff. She noted that there were companies that did this all the time.

Councilmember Snyder questioned whether the staff was talking about another \$30,000-40,000 study. Town Administrator Semmes reminded Council that they had a good bit of money in the budget for this purpose. She noted that the money had been carried over because the study had not been done. Ms. Semmes advised that she did not know what the cost would be.

Councilmember Snyder questioned whether the Council thought a \$30,000-40,000 expenditure on this kind of study was appropriate.

Councilmember Littleton suggested that if the Town was going to spend \$1-2 million on a new Town Center, where all of the Town government would be located, the Council should get it right and understand the plan at the beginning. He noted that he was not saying the cost should be

\$30,000-40,000; however, he opined that it would be wise to make the right investment and to get the right advice. Mr. Littleton suggested the study would not be less than \$10,000; however, it could help the Town to avoid making a \$500,000 mistake or building a building that would not meet its needs in ten years.

Councilmember Snyder acknowledged the need to get an idea of the scope and level of effort required; however, he advised that he had not wrapped his mind around a large government building project. He suggested the Council get citizen input before spending that kind of money on offices for the staff.

Councilmember Leonard-Morgan advised that he had no clue how much a study would cost and suggested it could be \$10,000-\$20,000. He noted that this was a big, long-term important project and opined that everyone accepted that this was something that needed to be done. Mr. Leonard-Morgan noted that the Town Office had existed in its current space since 1964.

Town Administrator Semmes reminded Council that the Town Office had experienced three mold remediations in the last decade.

Councilmember Miller opined that the building did not meet the staff's needs. Town Administrator Semmes opined that it did not meet the Council's needs.

Councilmember Snyder noted that when the Town Office was built, there were only three or four people working in it. Councilmember Miller opined that the staff would not get smaller. Town Administrator Semmes advised that she did not see it getting much larger. Councilmember Littleton opined that it may increase by one or two people in twenty years. Councilmember Leonard-Morgan noted that this was something the study would get into.

Councilmember Hazard suggested the staff plan for three additional staff members so the Town could save \$20,000.

Town Administrator Semmes explained that the study was to translate the Town's space needs.

Councilmember Miller questioned how long money had been in the budget for a study. Town Administrator Semmes reported that it had been there for at least three years.

Councilmember Leonard-Morgan noted that the RFP would give the Town some numbers to consider.

Councilmember Hazard suggested the Town did not need a lot of help figuring out how much staff would be needed. He advised that he could figure out how to translate that to space needs.

Mayor Davis advised that she did not see the staff growing exponentially. She questioned whether it was possible to use local architects, like Bill Turnure and Tim Clites, to work with the staff.

Town Administrator Semmes confirmed it was if they had space planning experience. She reminded Council that this would be advertised for anyone to submit a proposal. Ms. Semmes noted that the local architects would have an opportunity to bid on it and advised that the staff would make sure they received a copy. She reminded Council that this was not an issue of taking the low bidder as it was being done as professional services. Ms. Semmes noted that the cost would be a consideration; and, she expressed hope that a local company would be competitive.

Mayor Davis opined that the Town sometimes paid consultants a lot of money for studies and suggested they did not earn it. She advised that she was not saying their work was bad and explained that she did not see it for the amount of money the Town was paying. Ms. Davis asked that the staff provide the local architects with the information and opined that some of them did fantastic work and already knew the town.

Councilmember Hazard reminded Council that he was in the construction/design industry and advised that he did a lot of projects that were design/build ones. He noted that a local construction company designed their own space, which was the most efficient office he ever saw. Mr. Hazard opined that if the staff tasked out what they wanted and put together a design/build proposal, the company would bring in an architect and do everything under one contract. He suggested the space be planned for sixteen or twenty employees.

Town Administrator Semmes reminded Council that one issue of planning was that the Town did not yet have a property where it wanted to locate the facilities. She suggested the need for a space needs study in order to determine what the Town needed.

Councilmember Littleton noted that the Town did not know how much square footage was needed per person. He suggested it may not get the right property because it did not know how much space was needed.

Councilmember Miller noted that the space needed to include a Town garage, storage and maintenance facilities. He opined that it was worth doing a study.

Councilmember Snyder agreed with Mayor Davis and suggested this be done using Bill Turnure and Tim Clites. He suggested they could bring in whatever expertise was needed and could say what kind of cost was involved. Mr. Snyder opined that the Town should use a more intelligent process. He reiterated that the whole idea of massive construction concerned him.

Councilmember Littleton noted that no one said the Town was doing that and explained that it was only looking for advice.

Councilmember Hazard opined that the Town did not need a massive study and suggested he could go online and put together the amount of square footage needed for twelve people. He suggested these were all known parameters, including the square footage, and opined that the Town would spend money on designing the space. Mr. Hazard suggested it could then look at properties, knowing what was needed for the footprint. He opined that this could be easily done without a study.

Councilmember Littleton noted that Messrs. Turnure and Clites could respond to the RFP. He suggested the Council should not gear the project toward them and opined that everyone should read the requirements and submit a proposal. Mr. Littleton agreed they were fully qualified and would understand the problem the Town was trying to solve.

Town Administrator Semmes reminded Council that office environments had changed. She noted that the Town also did not have the manpower to figure out what space was needed, which was why the staff was asking for help. Ms. Semmes advised that if she had the time, she could prepare a summary of what the needs were; however, she would not want to rely on it.

Mayor Davis noted that the RFP would be issued on October 2nd. She questioned the due date for the responses. Town Administrator Semmes reported that the due date was November 6th. She advised that the Ad-hoc Property Committee would be used to review them. Ms. Semmes noted that the Town would not be committed to hiring anyone.

Mayor Davis suggested the Council wait to hear back from the staff.

Goal – Follow-Up

Councilmember Littleton questioned who remembered the first three strategic items that the Council discussed. Councilmember Miller opined that they were wayfinding, economic development strategy and placing the vision on the website.

Councilmember Littleton noted he was reading the agenda and questioned whether they had already done them. He questioned whether the Council needed to assign a member as the responsible individual for each item to make sure there was follow-through. Mr. Littleton noted that the Mayor's message item would be Mayor Davis'. He suggested he could be assigned to the parking study item and would make sure the Town stuck to the schedule. Mr. Littleton suggested the economic development plan be assigned to Councilmember Miller. He noted that the quad sheets had a sponsor box; however, they said it was "the Town Council". Mr. Littleton opined that if everyone was responsible, no one was responsible.

Councilmember Snyder noted that the Council had two more strategic goal items to discuss. He suggested they decide what made sense for all ten items. Mr. Snyder further suggested the Council should have all ten items in front of them before answering this question.

Councilmember Littleton questioned whether the Council wanted to assign a member to be responsible for one or two items to make sure they were on the action tracker and were being followed-through. He suggested that one person be accountable. Mr. Littleton reiterated that if everyone was accountable, everyone thought the others were doing it. He opined that this would help the staff. Councilmember Leonard-Morgan agreed this was a good suggestion.

Councilmember Littleton questioned whether the Council was open to this. Councilmember Miller suggested that after the next two items were discussed, the Council assign a member who would be responsible for each item. Councilmember Leonard-Morgan suggested that if the members took an item on, they would then focus on the item and would have a project. The Council agreed and suggested the assignment of members occur during the October work session.

Discussion – Employee Handbook Amendments – Introduction and Chapters 1-3

Councilmember Daly questioned whether the Council wished to review this by exception, as opposed to going over it page-by-page.

Mayor Davis suggested that if anyone had a question or suggestion on Chapter I that they raise it. She noted that the Town Attorney had reviewed the draft. Ms. Davis further noted that she, Vice Mayor Kirk, Town Administrator Semmes and Town Clerk North have carefully reviewed it. Town Administrator Semmes noted that the Town Treasurer also provided input.

Councilmember Snyder advised that his only comment was related to the Non-Disclosure of Confidential Information (page 17). He suggested that employees should be forbidden from storing personally identifiable information on their assigned personal computer. Mr. Snyder explained that this was the most sensitive data that people had and noted that the Town had a lot of utility customers and business owners where this would apply. He suggested that that kind of data was not masked on an employee's personal computer, which was most vulnerable to sabotage from the web.

Mayor Davis noted that there was something in the handbook that prohibited employees from personally using information. Councilmember Littleton opined that Councilmember Snyder was talking about employees storing Town information on their home computers.

Councilmember Snyder explained that he was talking about any computer that was issued to them by the Town. He suggested that putting sensitive data on someone else's computer should be absolutely forbidden. Mr. Snyder cited as examples, a utility customer's application data or tax information that clearly had the person's name, social security number or other identifiable information. He advised that he did not want that stored on a laptop.

Councilmember Littleton questioned where it should be stored. Councilmember Snyder advised that it should be stored on a server. Town Administrator Semmes confirmed it already was.

Councilmember Snyder suggested adding a policy to make it clear that this data should not be downloaded onto a Town laptop with the employee walking out of the office with it or leaving it on their desk.

Councilmember Miller suggested the need for a legal definition of "sensitive information". Councilmember Snyder confirmed he could provide one. He noted that there was a privacy person at his employer who he worked with as they dealt with personally identifiable information. Mr. Snyder advised that they were very sensitive to this concern. He reiterated that he could provide a definition.

Mayor Davis noted that this was addressed in the Electronic Communications & Telecommunications Policy located further in the handbook (page 57). Councilmember Snyder acknowledged that this may be addressed in other sections. He explained that it just hit him when he read the section on the non-disclosure of confidential information. Mr. Snyder advised that he was okay covering this in another chapter.

Mayor Davis suggested Councilmember Snyder read the policy starting on page 57 to determine whether this was already covered. She further suggested that if it was not that he provide information.

Town Clerk North asked Councilmember Snyder to provide some sample language.

Town Administrator Semmes opined that it would not hurt to be redundant.

Councilmember Leonard-Morgan noted that the Town of Leesburg insisted that their committee members have and use Town email addresses for their Town communications.

Town Administrator Semmes advised that this was very expensive and explained that holding a license for Town email accounts was not free.

Councilmember Littleton questioned whether this was Leesburg's choice. Town Administrator Semmes opined that they were doing it so that if there were Internet communications between committee members that they would be covered under FOIA. She suggested that any emails be copied to the Town Clerk so they could be archived.

Councilmember Littleton opined that while some committee members would be fine with it, others would fight it as they would not want to use multiple email addresses.

Town Administrator Semmes agreed this was something worth thinking about; however, she noted that the Town had a lot of committee members.

Councilmember Littleton questioned whether Councilmember Leonard-Morgan knew why Leesburg had that policy. He further questioned whether it was because of FOIA. Councilmember Leonard-Morgan advised that they just wanted any town committees to be recorded. Town Clerk North opined that it was due to FOIA.

Councilmember Hazard questioned whether the plan was to change charter employees to exempt employees. Town Clerk North explained that the term “charter employees” was still used in the handbook; however, the proposal was to use the terms “exempt” and “non-exempt” more as these were terms used by the federal government. She explained that for FLSA purposes, the federal government only cared whether an employee was “exempt” or “non-exempt” from overtime and did not care whether they were a charter employee.

Councilmember Hazard questioned whether this should go into the definitions. Councilmember Littleton opined that it should state that “charter employees are by definition exempt under the IRS Code”.

Councilmember Snyder opined that this was addressed in another chapter. He suggested that charter and non-charter employees was discussed just enough to satisfy the State of Virginia and anyone who had a Virginia centric point of view. Mr. Snyder advised that he was happy with seeing exempt and non-exempt where the handbook discussed issues that applied to that.

Councilmember Littleton reminded Council that the Fair Labor Standard Act, regardless of what was being projected for the State of Virginia, did not care about charter and non-charter employees.

Councilmember Snyder opined that the draft handbook included it enough to satisfy the federal labor laws.

Town Clerk North reminded Council that Chapter II identified the positions that were charter and that served at the will and pleasure of the Council. She further reminded them that Chapter III (Salary and Compensation) talked about the Fair Labor Standards Act and identified which were exempt and non-exempt. Ms. North opined that this was well covered.

Councilmember Hazard opined that it should all be in one place and suggested it be in the definitions. Town Clerk North advised Council that there were definitions for “charter” and “non-charter “employees.

Councilmember Littleton noted that the definitions did not state that a charter employee was by definition an exempt employee. He opined that as written, an employee could be a charter employee and non-exempt. Mr. Littleton noted that this was not what was done in practice.

Town Administrator Semmes noted that Chapter III identified how positions were classified and whether they were exempt or non-exempt. She reminded Council that currently all of the charter positions fell into the classification of being exempt.

Town Clerk North noted that she was trying to think of a charter position that could meet the definition for being a non-exempt employee. Town Administrator Semmes confirmed that this could occur and noted that the Town could have a Town Clerk who was not a full-time employee. She reminded Council that they have had part-time Town Clerks in the past. Ms. Semmes opined that the only way to classify them was based upon the job description at the current time.

Councilmember Littleton opined that the only way the Town could be covered was as Councilmember Hazard suggested, which was to have a clear definition of charter and non-charter and exempt and non-exempt employees in the definitions. He noted that the Town could theoretically have an employee who was hourly. Mr. Littleton advised that the way it was written was how things currently were; however, he suggested this may not be what they were in the future. He noted the need to change the Employee Handbook if that was the case. Town Administrator Semmes and Town Clerk North confirmed the handbook would need to be amended if there was such a change.

Councilmember Littleton noted that the Town could have two designations – charter and non-charter and exempt and non-exempt. Town Administrator Semmes noted that the Town already did.

Councilmember Littleton opined that they were now mutually exclusive and suggested they were reading that way. Town Administrator Semmes confirmed they were not mutually exclusive and advised that it was not intended to read that way.

Councilmember Littleton opined that it was confusing. He noted the need to read the definitions and then to go to another chapter to determine whether the position was exempt or non-exempt.

Councilmember Hazard suggested that being redundant was okay.

Town Clerk North noted that the definition of a charter official identified those positions as being the Town Administrator, Town Attorney, Chief of Police, Town Clerk and Town Treasurer. She further noted that the definition for a non-charter employee was any employee who was not a charter one, which applied to everyone else.

Councilmember Hazard noted that these were two separate things – charter/non-charter and exempt/non-exempt. He suggested that all of the definitions be located in one place. Mr. Hazard noted that exempt and non-exempt employees were identified on page 22.

Councilmember Littleton opined that the guidance the staff was getting from the Council was that they wanted to make it simple up front.

Councilmember Hazard noted that the handbook contained a definition for the Fair Labor Standards Act. He suggested there also be a definition of an exempt and a non-exempt employee. Mr. Hazard opined that it was silly not to have this in the definitions.

Town Administrator Semmes explained that one of the changes that were being made to the Employee Handbook was to make it clear who was exempt and non-exempt. She explained that charter/non-charter was unique to the Town. Ms. Semmes reminded Council that those could be changed if desired.

Councilmember Littleton noted that the initial review period was six months. He opined that traditionally, it was three months. Mr. Littleton suggested that if a person was not a good employee, the Town did not want to be saddled with them for six months. He explained that he was only throwing this out for consideration.

Councilmember Snyder opined that it was three months in the private industry. He suggested that having six months allowed the Town to still terminate them if it found they were not a good employee after three and a half months.

Councilmember Littleton opined that the Town should have engaged with the employee enough within ninety days to know whether they were going to work out or not. He advised that he did not know the “right” number; however, he always saw three months.

Town Clerk North noted that it was six months in the current Employee Handbook.

Councilmember Littleton suggested a question to pose to the Town Attorney was “what was the common practice”.

Mayor Davis questioned whether the Town would be precluded from terminating someone after three months, even though the initial review period was six months and opined that it could let an employee go after three months if they were doing something wrong. Town Clerk North confirmed it could.

Councilmember Snyder explained that it was implied that if the employee was within the initial period of employment, the Town could let them go without giving them a reason.

Councilmember Littleton agreed. He noted that once that period ended, the Town was setting itself up for a law suit for not having a reason even though Virginia was an at-will state.

Town Clerk North suggested the Town would want a longer period of time to let someone go without having to give a reason.

Councilmember Littleton opined that the reason people used ninety days was that the six month period did not work. He further opined that companies had been fined for letting people go after five and a half months, even though their policies allowed for six months.

Councilmember Leonard-Morgan opined that the amount of time had to do with whether it was for a commercial entity versus a local government and noted that government operated using a different approach. He acknowledged that it was the staff’s job to hire and fire; however, they may want to involve the Council. Mr. Leonard-Morgan noted that they may not see them for a few weeks and opined that six months was fair.

Councilmember Littleton reiterated that he had only seen three months, not six, in policies. Town Clerk North advised that in local government, she had only seen six.

Councilmember Littleton noted the language in the initial review period section that talked about “...given more time to adjust through an extension of the initial review period...” He opined that it was not about the employee adjusting but rather was about whether the Town wanted to keep them because of their performance. Mr. Littleton suggested another word be used in place of “adjust” and that no reason be given. He further suggested the Town have the ability to unilaterally extend the review period. Mr. Littleton opined that if someone was not performing, the Town would coach them. He suggested the extension be at the discretion of the Town.

Councilmember Snyder suggested that in looking at why the Town would do something like that, the Town may think the employee had potential but was stumbling and was not where it wanted them to be. He further suggested the Town may want to give them xx days to resolve the issue or it would have to let them go.

Councilmember Daly advised that in reading the entire paragraph, there was a lot of discretion given. He noted that the options included keeping the employee, giving them more time to adjust or removing them from service. Mr. Daly advised that he did not see that any changes were necessary given that all three options were given.

Councilmember Littleton explained that his issue was with the word “adjust”. Town Clerk North suggested the staff look for a better word. She opined that the Town may not want to be subjective as to when to keep or remove an employee.

Mayor Davis opined that this would apply in the case of someone the Town liked and felt would fit. Councilmember Littleton opined that they would only need some coaching, mentoring, direction and guidance.

Councilmember Snyder suggested that as opposed to the word “adjust”, it should be the phrase “show improvement”.

Councilmember Littleton suggested the staff talk to the Town Attorney and come up with a different word.

Councilmember Littleton noted the section on Termination of Employment by the Town for Non-Charter Employees. He advised that Virginia was an at-will state, meaning the Town did not have to have a reason to fire someone. Mr. Littleton noted that it could not be for an illegal reason, such as race or gender. He suggested the Town could say “it was getting rid of everyone on the second floor”. Mr. Littleton opined that the language made it sound like all the Town did was fire for cause. He questioned what would happen in the case of a reduction in force. Town Clerk North advised that there was another section in the handbook that talked about lay-offs.

Councilmember Littleton questioned whether the Town would put itself in a corner with the proposed language. He suggested it could hire someone and in the future realize it did not need the position and want to eliminate it. Mr. Littleton opined that the language only allowed an employee to be fired for cause.

Councilmember Snyder advised that the Town did move its utilities staff to Loudoun County. He noted that they were no longer Town employees. Mr. Snyder advised that they did not do anything wrong, they were simply moved.

Councilmember Littleton noted that those employees were terminated from the Town’s employ even though they did nothing wrong. He advised that this was his suggestion. Mr. Littleton advised that it was okay if the Town only wanted to have dismissals for cause.

Town Clerk North read the language from the “Other Separation From Employment” section and opined that this was covered. She explained that part of that overall section dealt with the dismissal of non-charter and charter employees and the remainder talked about other separations from employment, such as lay-off and job abolishment.

Town Administrator Semmes questioned whether there were any other instances of separation that Councilmember Littleton would like to include. She suggested the staff ask the Town Attorney whether there were any other types of separation that should be included.

Councilmember Littleton suggested that if this was what was done in practice, the draft handbook included a lot of words that were not needed. He questioned why language was needed if the Town had the ability to let an employee go for any reason.

Councilmember Snyder noted that the Town let two employees go, both of whom were charter employees. He advised that those were handled differently. Mr. Snyder noted that other than the change in utility staff to transfer those positions to the County, he was not aware of any other changes in staff, aside from people resigning or retiring.

Councilmember Littleton opined that the Town could have a part-time police officer position, which could be changed to a full-time one. He suggested that in that case, the Town would not be abolishing the position or laying anyone off. Mr. Littleton opined that the Town could not fire the part-time employee as it was not be for cause.

Councilmember Snyder noted that, in that case, the Town would be abolishing the part-time position and creating a full-time one.

Town Administrator Semmes acknowledged what Councilmember Littleton was saying in that since Virginia was an at-will state, he wanted to make sure there was as much flexibility as possible in the handbook.

Councilmember Littleton advised that he was fine with this one way or the other. He reiterated that the Town wanted to do that. Mr. Littleton questioned whether anything was needed if Virginia was truly an at-will state.

Councilmember Hazard noted that the Town had “charter employees” and questioned what that was. Town Administrator Semmes explained that they were employees that were specifically listed in the Town’s Charter.

Councilmember Hazard questioned where the Employee Handbook said this. Town Administrator Semmes advised that it was shown on page five in the definitions. She read the definition of a charter employee.

Councilmember Hazard noted that he knew what they were; however, he questioned how a new employee would know this. Town Administrator Semmes opined that people would skip over the definitions until they needed them.

Town Clerk North opined that those employees who served at the will-and-pleasure of the governing body knew this. Councilmember Littleton opined that it was about what was in writing. Councilmember Hazard suggested that once the Town had an Employee Handbook that was what it must live by. He acknowledged that there was a definition in the handbook.

Town Administrator Semmes suggested the staff could always remind people.

Councilmember Hazard questioned where the Town Charter was located. Town Administrator Semmes advised that it was located in the Town Code.

Mayor Davis questioned whether the Council had any questions related to Chapter II (Classification of Employment and Status Changes).

Town Administrator Semmes opined that the Council was looking to combine this chapter with Chapter I and suggested it did not need to be its own chapter.

Mayor Davis questioned whether the Council had any questions related to Chapter III (Salary and Compensation).

Councilmember Littleton noted the section on performance bonuses. He read the language that allowed an employee who attained a 4.0 or higher on his/her performance evaluation to be eligible for a base pay performance increase of up to three percent. Mr. Littleton questioned why this was limited to three percent. Town Clerk North advised that this was a starting point that the staff inserted for discussion purposes.

Councilmember Littleton suggested this be in an amount as determined each year by the Town Council. Councilmember Snyder agreed. Councilmember Littleton noted that there may be years where the Council needed to be careful and others when the staff did an amazing job and the Council wanted to increase it to five percent. He suggested the Council should have the flexibility to do that.

Town Administrator Semmes suggested the language may want to read “may be eligible to receive” in the event the Town did not have the money.

Councilmember Hazard noted that there was language that made the increase “dependent on the availability and the amount of funding as approved by the Town Council”.

The Council agreed to strike the phrase “of up to three percent (3%)”.

Councilmember Miller questioned whether there was language in the Employee Handbook that talked about what the performance evaluation looked like. Town Administrator Semmes confirmed it was in a later chapter.

Councilmember Littleton advised that he and Councilmember Daly worked on a bonus program over the summer and noted that it was not what was included in the draft Employee Handbook. Town Administrator Semmes and Town Clerk North advised that neither of them ever saw that document. Councilmember Daly opined that it was passed along to Vice Mayor Kirk.

Councilmember Littleton agreed to email it to the staff. He explained that they came up with criteria. Mr. Littleton opined that the biggest difference between what he and Councilmember Daly proposed and what the staff proposed was that the bonus could be up to five hundred dollars as opposed to two hundred fifty dollars. He reiterated that he would email it to the staff.

Councilmember Snyder suggested that anytime there was a number included that it also include the phrase “or as otherwise determined by the Town Council”. Town Administrator Semmes advised that the language did state that “all project bonuses shall be at the discretion of the Council”. She noted that the spot bonuses were small ones that would not require Council approval but were subject to Council’s approval of the pool amount.

Town Clerk North noted that the first full paragraph on page twenty-nine stated that bonuses in general were subject to the availability of funds and the adoption of an ordinance authorizing such bonuses, the latter of which the Council had already done.

Town Council Reports

Councilmember Hazard reported that the Planning Commission held their second community input session on the Comprehensive Plan update; however, the response was not as good as during the first one. He noted that twenty plus people were present. Mr. Hazard reported that they got into specific items and opined that the event was worthwhile.

Councilmember Littleton agreed the participants did a great job. He noted that while they were working independently at three separate tables, they came up with the same themes and thoughts. Mr. Littleton advised that there was a lot of commonality in the responses.

Councilmember Daly reported that the Oath of Honor would be taken by the Lieutenant and Corporal during the October Council meeting.

Closed Session – Acquisition & Disposition of Property

Councilmember Miller moved, seconded by Councilmember Daly, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(3) pertaining to the discussion or consideration of the acquisition of real property for a public purpose or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. Councilmember Miller further moved, seconded by Councilmember Daly, that these matters be limited to the disposition of publicly held property related to economic development and the acquisition of property within the town. Councilmember Miller further moved, seconded by Councilmember Daly, that in addition to the Council, the following individuals be present during the closed session: Martha Mason Semmes and Jamie Gaucher. Councilmember Miller further moved, seconded by Councilmember Daly, that the Council thereafter reconvene in open session for action as appropriate.

Vote: Yes – Councilmembers Daly, Hazard, Leonard-Morgan, Littleton, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Vice Mayor Kirk

(Mayor Davis only votes in the case of a tie.)

Mayor Davis asked that Council certify that to the best of each member’s knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting, which each member so did. She reminded those present for the closed session that any discussion that occurred within it should be treated as confidential.

There being no further business, Mayor Davis declared the meeting adjourned at 7:53 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk



**RESOLUTION OF APPRECIATION
CINDY CRAUN PEARSON
FOR
SERVICE AS THE ECONOMIC DEVELOPMENT COORDINATOR**

WHEREAS, the Town hired Cindy C. Pearson as an Administrative Assistant on October 16, 2006; and,

WHEREAS, Ms. Pearson served as Interim Economic Development Coordinator effective June 15, 2007 until she was promoted to Economic Development Coordinator on October 9, 2007;

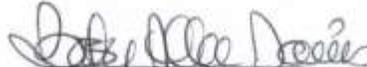
WHEREAS, Ms. Pearson's many accomplishments while serving the Town of Middleburg include marketing the town and regularly updating the Middleburg Shopping & Dining Guide; developing a Friday E-Mail Blast to inform residents and visitors of Middleburg area events; developing and updating the Town's website; serving as the Town's representative on the Christmas in Middleburg Committee and assisting with the event, including preparing lunches for the volunteers on that day; serving as the Town's representative on the Middleburg Business & Professional Association's Board of Directors, and assisting with events, such as the Annual Sidewalk Sale; serving as the staff to the Middleburg Arts Council and assisting with events such as Arts in the Pink Box Park; assisting the Streetscape Committee with the annual Arbor Day celebrations; serving as the staff manager for the Middleburg Community Farmer's Market; providing staff support for the Pink Box Advisory Board, the Main Street Middleburg Committee and the Economic Development Advisory Committee; serving as the Town's representative on Visit Loudoun's Board of Directors; coordinating the annual Bluemont Concerts in the town; and assisting the Town Treasurer with her duties. Ms. Pearson also served as the Acting Town Treasurer from October 2015 through January 2016; and,

WHEREAS, Ms. Pearson has demonstrated extraordinary professional and personal dedication to the Town of Middleburg; and,

WHEREAS, the Middleburg Town Council deems it appropriate to express its gratitude to Ms. Pearson for her exceptional service over the past eleven years;

NOW, THEREFORE BE IT RESOLVED that the Mayor and Members of the Town Council of Middleburg, Virginia recognize and express our sincere appreciation for the exemplary services of Cindy C. Pearson to the Town of Middleburg as an Administrative Assistant and the Economic Development Coordinator from October 16, 2006 through September 30, 2017 and express our profound thanks to her and hope for her continued success in life.

APPROVED:


Betsy A. Davis, Mayor

ATTEST:



Rhonda S. North, MMC
Town Clerk

This resolution was adopted by the Town Council of the Town of Middleburg, Virginia on the 28th day of September, 2017.